Originals

1908-09

FILE No. 27 OF 1907-08

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT.

(LEGISLATION)

DECEMBER 1908

"A" Collection Serial Nos. 3—5

Status of Volunteer Forces in Native States.

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1907-08

GENERAL AND REVENUE SECRETARIAT.
(LEGISLATION.)

NOTES.

File No. 27 of 1907-08.

Status of Volunteer Forces in Native States.

From the First Assistant to the Hon'ble the Resident in Mysore, D. O. No. 3025, dated 8th June 1908.

States that on further consideration the Resident is of opinion that under Section 128 of the Criminal Procedure Code read with Section 3 (28) of the General Clauses Regulation, a Mysore Magistrate is legally competent to call upon European British subjects residing in the State, hence Volunteer Forces, to aid in the preservation of public order; that Section 132 of the Code would afford protection against acts done in pursuance of requisitions made under Section 128 thereof; and that if the Durbar agree in this opinion, the Resident would address the officers commanding the Corps and unit to assist the local Magistracy for the purpose mentioned in Section 128 on receipt of authorization to this effect from the Resident who shall have been first moved in the matter, the Durbar issuing similar instructions to officers under them to give effect to the above

Submitted for orders with references.

T. K. S.

15-6-1908.

S. N.

16-6-08.

3. The Residency suggests that, if the Durbar agree in the opinion of the Hon'ble the Resident, Section 132 (*c*) of the Criminal Procedure Code would protect the members of the Volunteer Corps against prosecution for acts done in dispersing an assembly, the Officers Commanding would be informed that they cannot act *suo motu* in cases of disturbance (since Sections 23 and 24 of the Indian Volunteers Act do not operate in the Mysore State) but may place their men at the disposal of the local Mysore Magistrate, acting as a civil force for the purpose set out in Section 128, Mysore Criminal Procedure Code, on receipt of an authorization to this effect from the Resident who will first have been moved in the matter by the Durbar. To supplement these instructions, the Durbar are to instruct their Magistrates that they cannot directly require the assistance of Volunteer Officers and their men in a collective capacity under Section 128, Criminal Procedure Code, but must communicate to Government their request that authorization for the use of volunteers be obtained through the Resident.

4. No doubt, under Section 128 of the Criminal Procedure Code, any Magistrate or Officer in charge of a Police Station may require the assistance of any male person not being an officer or soldier in the military forces of the Maharaja and acting as such, for the purpose of dispersing an unlawful assembly, and the word "person" includes a body of persons. We need not go to the General Clauses Act for the definition of this word, for it is defined in Section 11 of the Indian Penal Code and under the last para of Section 4, Criminal Procedure Code, all words and expressions not defined therein have the same meanings as are attributed to them in the Indian Penal Code. But the Criminal Procedure Code draws a distinction between the use of civil force and the use of military force for dispersing an unlawful assembly. Under Section 129, it is only a Magistrate and not a Police officer who can summon the aid of the military, and he may do so only when the assembly cannot be otherwise dispersed and it is necessary for the public safety that it should be dispersed. Sections 132, Criminal Procedure Code, clause (*c*), affords protection against prosecution to persons acting in good faith in compliance with a requisition under Section 128 and to the military forces of the Maharaja whose aid has been required under Section 130. The Volunteers do not evidently come in under the latter category and it seems very doubtful whether any Court of Justice would construe as a civil force or as otherwise than what it actually is, a body of Voulunteers acting in dispersing an assembly, so as to give them the benefit of the first portion of Section 132 (*c*). If they may be regarded as a civil force whose aid is required under Section 128 and whose acts are consequently protected under Section 132 (*c*), they

should be regarded as subject also to the conditions applicable in general to other persons. Under Section 128, Criminal Procedure Code, both a magistrate and a police officer may require the assistance of any male person for dispersing an unlawful assembly, by virtue of their authority, but the Residency admits that as the law in Mysore at present stands, there is no legal method by which a Mysore Magistrate can require any Volunteer Officer to disperse an unlawful assembly by military force, and according to the arrangement proposed, it is only a Magistrate that may require the aid of the volunteers and that too, after obtaining the authority of the Resident. Then again, an ordinary person who intentionally omits to render assistance when required under Section 128, Criminal Procedure Code, is liable to be prosecuted under Section 187, Indian Penal Code, and it is not known if the Residency will concede that a member of the Volunteer Corps who omits to render assistance is liable to be prosecuted in the same way. The Volunteers Act not being applicable to Mysore, he cannot be punished under any of the provisions thereof for neglecting to render assistance. It seems to be opposed to the spirit of the law to treat the force as merely a civil force acting in compliance with a requisition under Section 128, Criminal Procedure Code, and entitled to the protection afforded by Section 132 (*c*), Criminal Procedure Code.

5. Apart from the legal aspect of the question, the arrangement in itself is most inconvenient and does not seem to be of much use. The action which a Magistrate or Police officer has to take generally in such cases is prompt and immeditate and he will scarcely have sufficient time to move the Residency through Government and obtain authority for calling the Volunteers.

6. May the Government Advocate be consulted on the legal aspect of the question?

K. MYLAR RAO
29-6-08.

7. Yes

K. S. CHANDRASEKHARA AIYAR.
8-7-08.

8. Forwarded to the Government Advocate for favor of opinion, unofficially.

S. P. RAJAGOPALACHAR,
For *Secy. to Govt.*

9. Ordinarily, any foreigner or a British subject on entering the Mysore Territory is bound by the Mysore laws in force and is also entitled to the protection afforded by them, though no Mysore Court has jurisdiction to try a European British subject. By reason of his residence in Mysore, he is bound to render assistance in his individual capacity to the Mysore Police and Magistracy when called upon to do so under Section 128 of the Mysore Criminal Procedure Code, but not as a member of the Volunteer Corps or as a soldier in the British army. The Volunteer Corps or a section of the British army stationed in Mysore cannot, in my opinion, render any assistance to the Mysore officers without an express authority from the Government of India, nor will it be legal for a Mysore officer to demand their assistance without an express provision to that effect in the Mysore Criminal Procedure Code.

10. The opinion of the Hon'ble the Resident that the Magistracy and Police in Mysore can legally call upon the Volunteer Corps to assist them in dispersing an unlawful assembly or an assembly of persons likely to cause disturbance of public peace under Section 128, Criminal Procedure Code, would be sound if the Volunteer Corps can be included in the expression "any male person" used in the said section. The course of reasoning adopted is that, as the word 'person' has been so defined as to include any company or association or body of persons whether incorporated or not, the Volunteer Corps comes under the category of persons whose assistance may be required under the said section. This interpretation is somewhat strained, for it seems to me that the above definition of the term 'person' has reference to a body of persons having certain civil or contractual relationship among the members thereof but not to an organized army

11. The British Indian Procedure Code exempts any soldier in the British army or any Volunteer from being called upon to assist under Section 128 and makes a separate provision in Section 130 for invoking the aid of the Army or Volunteer Corps. Similar provisions are made in the Mysore Procedure Code regarding the Military Forces of His Highness the Maharaja and the officers and soldiers belonging to them. The reasons which prevailed upon the Legislature for excluding the units of the army and Volunteer Corps from the expression "any male person" in Section 128 cannot be said to have ceased to exist in Mysore. On the other hand, these reasons seem to apply with greater force, specially in respect of the British army and Volunteer Corps. The dictum of the Hon'ble the Resident that a requisition for the aid of the Volunteers shall, in the first instance, be made to him and that the

Commanding Officers will place the men at the disposal of the local Mysore Magistrate on an authorization to this effect from the Resident, emphasizes the existence of the distinction I have ventured to set forth above.

S. NARAYANA RAO,
Govt. Advocate.
13-7-08

12. From the legal aspect, there are two objections to the course proposed. Firstly, as observed by the Government Advocate, it is to put too strained a meaning to the word 'person' if we are to apply the term to a body of men banded together to be useful as Military Corps (*vide* preamble to Volunteer Act XX of 1869), and subject to Articles of War (*vide* Section 8). Secondly, if a Mysore Magistrate can requisition them under Section 128, the other sections of the Code would also apply to them. They can be prosecuted, in this view, for not obeying the requisition. This state of things will hold good legally, even if a Magistrate does not follow the procedure regarding previous authorization from the Resident, which is proposed in the Residency letter. All this proposed procedure is, so far as the letter of the law is concerned, simply for departmental or administrative convenience. The foundation for this procedure rests on the essential validity of the Magistrate's action under Section 128. Speaking in a strictly legal sense, when the Criminal Procedure Code does not require previous sanction of Government to call any male person under Section 128, no instruction by Government could make it compulsory. This is the inevitable result of accepting the interpretation put by the Residency on Section 128.

S. P. RAJAGOPALACHAR.
15-7-08.

C. S. BALASUNDARAM IYER.
16-7-08.

13. It is not, I fear, possible to agree with the Resident's view of the term "person" as used in Section 128 of the Criminal Procedure Code as including a body of volunteers acting in a collective capacity. The expression used in the section is "any male person," which refers evidently to individual persons, and not to bodies of individuals, which cannot well be spoken of as having any sex in their collective capacity. Such being the case, we cannot assent to the argument and the suggestions based on the view in question.

14. Individual volunteers, in any number, could of course be requistioned by a Mysore Magistrate under Section 128, though a British Indian Magistrate is debarred from doing so by reason of the words "not being a volunteer" occuring in the corresponding section of the British Indian Code.

15. On principle, it seems to me undesirable for the Mysore State or its Magistracy to rely, for the maintenance of internal peace and order, on the services of any alien force not subject to the control of the local Government, even if, as in the case of the Volunteers, several of the members of the force happen to be residents in Mysore and, possibly, Government servants. The Government have on a former occasion in their order of 1st April 1896 No. 269 D. C. disapproved of the calling of volunteers by the local magistracy.

16. The thanks of the Durbar may be conveyed to the Hon'ble the Resident for his evident desire to oblige them by placing the assistance of the Volunteers at their disposal in cases of sudden emergency; but it may be pointed out that the Durbar are unable to avail themselves of the offer both on legal grounds and on grounds of expediency. If a reply to this effect is approved, a draft will be put up.

K. S. CHANDRASEKHARA AIYAR.
17-8-08.

17. I agree with the Secretary. It is not expedient to invoke the assistance of the Volunteers for quelling disturbances of public peace. We have a special armed Reserve Force for this purpose. The view taken in the Residency letter appears to be open to legal objections as pointed out by the Secretary. No further action appears to be necessary.

K. P. PUTTANNA CHETTY.
18-8-08.

18. I concur. I suppose that Mr. (Coffee Planter) Pilkington can be called upon under Section 128, Criminal Procedure Code, and that in that case he will appear in his individual (personal) capacity and in plain clothes.

T. ANANDA RAO.
31-8-08.

To the Secretary.

19. Please draft a reply in terms of your remarks.

V. P. MADHAVA RAO,
Dewan.
2-9-08.

20. Draft submitted.

S. P. RAJAGOPALACHAR.
3-9-08.
C. S. B.
7-9-08.

Please make a typed copy of the draft and submit to Dewan.

K. S. C.
7-9-08.

Typed draft D. O. submitted.
S. N.
11-9-08.

S. P. R.
11-9-08.

21. The D. O. reply has been issued and the file resubmitted with a copy of the D. O.
B. V. L.
12-9-08.

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4. To the First Assistant Resident in Mysore, D. O. No. 1309. dated 12th September 1908.

Regrets that there are some legal difficulties in the way of the Durbar accepting the services of the Volunteer Corps for reasons stated therein.

* * * *

D. O. No. 5504, dated Bangalore 22nd October 1908, from the First Assistant to the Resident, to the Dewan.

I am desired to acknowledge the receipt of your D. O. letter No. 1309, dated 12th September 1908, to the address of Mr. Moore, regarding the employment of Volunteers for the maintenance of the public peace in the Mysore State.

2. In reply, I am to state that Mr. Fraser quite agrees with the Durbar that it is not desirable for their Magistracy to rely for the maintenance of internal peace and order on any force not subject to their control and that the only object of Mr. Rennie's letter of the 8th June 1908 was to suggest the procedure, which commends itself to the Residency as that least likely to lead to complications should a sudden and grave emergency arise which compelled the Durbar to seek the temporary assistance of a Volunteer Force in the Mysore State. The Resident proposes, therefore, to inform the Officers Commanding Volunteer Corps in the sense of paragraph 4 of Mr. Rennie's letter No. 3025, dated the 8th June 1908, of the conditions under which alone their men can be permitted to act, except in their individual capacity, in response to a requisition for aid by a Mysore Magistrate.

Submitted to His Highness.

26. In continuation of my note dated 29th September 1908, I submit for information the First Assistant Resident's D. O. letter No. 5504, dated 22nd October 1908, regarding the employment of British Volunteers by the Magistracy in Mysore.

V. P. M.,
Dewan of Mysore.
23-10-08.

28. *Order*

K. R. W.,
His Highness the Maharaja of Mysore.
27-10-08.

29. We have to communicate the substance of the arrangement confidentially to the Inspector-General of Police and the District Magistrates for information and guidance. Please put up a draft.

K. S. C.
7-11-08.

Draft submitted.
T. K. S.
9-11-08.

S. N.
9-11-08.

S. P. R.
9-11-08.

C. S. B.
9-11-08.

30. I have prepared a fresh draft, which may be approved.

K. S. C.
11-11-08.

31. May be approved.

K. P. P.
12-11-08.

32. Yes.

T. A. R.
29-11-08.

33. Draft approved.

V. P. M.
30-11-08.

34. Issue.

K. S. C.
21-12-08.

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5. To the Inspector-General of Police in Mysore, District Magistrates of all Districts and the Registrar of Chief Court, No. J. 1791-800, dated 23rd December 1908.

Directs that the employment of Volunteers by local officers to help them in checking a threatened breach of the peace, except under special circumstances and under special conditions, is unauthorized.

35. Please see further correspondence on the subject, D. O. from the Residency No. 6917, dated 22nd December 1908, and the Dewan's reply thereto, No. D. 1490, dated 1st January 1909, submitted.

B. V. L.
6-1-09.

Seen.

K. S. C.
16-1-09

D. O. No. D. 1490, Enclosure 1, from the Dewan, to the First Assistant Resident, Bangalore, dated 28th December 1908.

(Camp Srinivaspur, dated 1st January 1909.)

With reference to your reminder No. 6917, dated 22nd December 1908, regarding the employment of British Volunteers for the maintenance of the public peace in the Mysore State, I send herewith, for the information of the Hon'ble the Resident, a copy of Government Proceedings No. 1791-1800—Legis. 27-07-5, dated 23rd December 1908, communicating to the Magistracy and the Police the conditions, as set forth in para 4 of Mr. Rennie's letter No. 3025, dated 8th June 1908, under which British Volunteers will be permitted to act in their collective capacity in response to a requisition for aid by a Mysore Magistrate.

Yours sincerely,
V. P. MADHAVA RAO.

Judicial and Legislative (Legislation), December 1908.

Status of Volunteer Forces in Native States.

File No. 27 of 1907-08.

D. O. from Mr. F. P. Rennie, First Assistant to the Hon'ble the Resident in Mysore, to Mr. V. P. Madhava Rao, C.I.E., Dewan of Mysore, No. 3025, dated 8th June 1908.

Serial No. 3.

The Resident has been considering further the question discussed in the correspondence ending with your demi-official letter No. 1106, dated 11th April 1908, regarding the employment of Volunteers for the maintenance of public peace in the Mysore State. The Volunteer movement has undergone conisderable development among the numerous Europeans residing in the State and there are now Corps or Sections of Corps at Bangalore, Mysore, Whitefield, Sivasamudram, Kolar Gold Fields, Chikmagalur, Saklespur and Ayanur. The Durbar have always provided facilities for the training of such units and in cases of sudden emergency calling for the quelling of civil disorder, would probably desire in the future, as in the past, to utilize the services of the individuals comprising the Volunteer Corps.

2. The Indian Volunteers Act, 1869 (XX of 1869), however, is in force in the Mysore State only as a personal law, with the result that the operation of Sections 21, 22, 23 and 24 of the Act is confined to British subjects and that the Act as a whole is practically inoperative. In the absence of further legislation, to which, whether undertaken by the British Government or the Durbar, there appear to be grave difficulties, there is no legal method by which a Mysore Magistrate can, under the Criminal Procedure Code in force in Mysore territory, require any Volunteer officer to disperse an unlawful assembly by Military force.

3. A way of attaining the desired result, however, appears to present itself under the terms of Section 128 of the Mysore Criminal Procedure Code, read with the interpretation of the term 'person' in Section 3 (28) of the Mysore General Clauses Regulation, III of 1899. Under Section 128 of the Code, any Magistrate or Officer in charge of a police station may require the assistance of any male person, not being an officer or soldier in the Military forces of the Maharaja and acting as such, for the purpose of dispersing an unlawful assembly, and the word 'person' as defined in the General Clauses Regulation seems sufficiently comprehensive to include a body of individuals (whether or not they are members of a Volunteer Corps) acting in a collective capacity in compliance with such a requisition. As you are aware, European British subjects are not exempt from the provisions of the Mysore Criminal Procedure Code, except as regards their liability to the jurisdiction of the State Courts in criminal proceedings against them. *Vide* the last sentence of Sub-section (2) of Section 1 of the Code. The scope of this limited exemption is explained in the Durbar's Notification No. 124-34—Legis. 12-03, dated 9th February 1904, wherein the term 'Jurisdiction' has been held to mean jurisdiction to enquire into or try a charge, and Police officers and Magistrates in Mysore have been authorised to exercise with respect to European British subjects, the same powers as are exercisible in British India outside the Presidency Towns by Police Officers and Magistrates who are not Justices of the Peace. The Mysore Magistracy seem therefore to be legally competent to call upon European British subjects, as residents of the State, to aid in the preservation of public order; and, in Mr. Fraser's opinion, Section 132 (*c*) of the Code would appear to afford the protection against prosecution for acts done by such subjects and others who may also be members of the Volunteer Force, in compliance with requisitions under Section 128, which is a condition precedent to any such assistance from the body in question being authorised.

4. If the Durbar agree that Section 132 (*c*) of the Code would afford the necessary protection, the Resident proposes to address the officers commanding Volunteer Corps and units informing them that they cannot act *suo motu* (since Sections 23 and 24 of the Indian Volunteers Act do not operate in the Mysore State) in cases of disturbance, but may place their men at the disposal of the local Mysore Magistrate acting as a civil force for the purposes set out in Section 128, Mysore Criminal Procedure Code, on receipt of an authorization to this effect from the Resident who will first have been moved in the matter by the Durbar. To supplement these instructions, it will be for the Durbar, if they see no objection to instruct their Magistrates that they cannot directly require the assistance of Volunteer officers and their men *in a collective capacity* under Section 128, but must communicate to Government their request that authorization for the use of the Volunteers be obtained through the Resident.

Proceedings of the Government of His Highness the Maharaja of Mysore,

Status of Volunteer Forces in Native States.

From the Dewan to the First Assistant to the Hon'ble the Resident in Mysore,
D. O. No. 1309, dated Bangalore, 12th September 1908.

Serial No. 4.

Please refer to Mr. Rennie's D. O. letter No. 3025, dated 8th June 1908, regarding the employment of Volunteers for the maintenance of the public peace in the Mysore State.

2. It is there pointed out that under the terms of Section 128 of the Criminal Procedure Code, the aid of the Volunteer Corps may be invoked by a Mysore Magistrate, and it is suggested that the word "person" as used in the section is comperhensive enough to include a body of individuals, whether or not they are members of a Volunteer Force and that, therefore, the Mysore Magistrates are legally competent to call upon the Volunteer Corps to aid in the preservation of public order.

3. The Durbar have carefully considered the question and it seems to them that the expression used in the section can hardly be taken to include a Volunteer Corps. The word "person" as defined in the General Clauses Regulation, no doubt, includes bodies of persons. But I think it is putting too strained an interpretation on the expression to apply it to a body of men banded together as a Military Corps and subject to the Articles of War so far as their summary duties are concerned. Moreover, the expression used in Section 128, Criminal Procedure Code, is "any male person," which refers evidently to individual persons and not to bodies of individuals, which cannot well be spoken of as having any sex in their collective capacity. Individual volunteers could, of course, be requisitioned in any number, by a Mysore Magistrate under Section 128, Criminal Procedure Code, though a British Magistrate is debarred from doing so by reason of the express terms of Section 128 of the British Indian Code. But there appear to be grave legal difficulties in the way of a Mysore Magistrate requisitioning a Volunteer Corps in its collective capacity.

4. Apart from the legal difficulties, it does not seem to be desirable for the Durbar or their magistracy to rely for the maintenance of internal peace and order on the services of any force not subject to their control; even if, as in the case of a Volunteer Corps in Mysore, several of the members of the force happen to be residents in Mysore and possibly holding office under the Durbar The employment of any such force is likely to lead to complications which it is desirable to avoid. Acting on this principle, the Durbar, so long ago as 1896, disapproved of the calling out of Volunteers by the local magistracy.

5. I wish, however, to express the thanks of the Durbar to the Hon'ble the Resident for his evident desire to oblige them by placing the assistance of the Volunteers at their disposal in case of sudden emergency, though I regret that the Durbar are unable to avail themselves of the offer both on legal grounds and on grounds of expediency as stated above.

Serial No. 5.

No. J. 1791-1800—LEGIS. 27-07-5, DATED 23RD DECEMBER 1908.

ORDER.—An instance having recently occurred of the employment of Volunteers by local officers to help them in checking a threatened breach of the peace, His Highness' Government consider it necessary to point out that such employment, except under exceptional circumstances and under special conditions to be presently mentioned, is unauthorized.

2. In the first place, Government consider it undesirable for their magistracy to rely for the maintenance of internal peace and order on the services of a force not subject to the control of Government. The employment of any such force may also lead to complications which should be avoided.

3. In the next place, it is not open to a Magistrate, under the law in force in the State to requisition a Volunteer Corps in its collective capacity, though he would not be debarred under Section 128 of the Mysore Criminal Procedure Code from requisitioning the services of any male person, whether a Volunteer or otherwise, in his individual capacity.

4. There remains the contingency of a sudden and grave emergency arising in which the temporary assistance of a Volunteer Force in the Mysore State becomes indispensable,

In such a case the Government of His Highness the Maharaja must first be moved by the Magistrate concerned to obtain from the Hon'ble the Resident the necessary authorization to the Officers Commanding Volunteer Corps to place their men at the disposal of the local magistracy. In no circumstance is it open to a Magistrate to himself require the assistance of Volunteer Officers and men in a collective capacity.

K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Inspector-General of Police in Mysore.
The District Magistrates of all Districts for information, guidance and communication to subordinate Magistrates concerned.
The Registrar of Chief Court, for information.

Exd.—C. V.